

105TH CONGRESS
2D SESSION

H. R. 3249

IN THE SENATE OF THE UNITED STATES

JULY 21, 1998

Received; read twice and referred to the Committee on Finance

AN ACT

To provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Federal Retirement Coverage Corrections Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Applicability.
- Sec. 4. Restriction relating to future corrections.
- Sec. 5. Irrevocability of elections.

TITLE I—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS ACT APPLIES AND MEASURES FOR THEIR RECTIFICATION

Subtitle A—Employee Who Should Have Been FERS Covered, But Who Was Erroneously CSRS Covered or CSRS-Offset Covered Instead

- Sec. 101. Elections.
- Sec. 102. Effect of an election to be transferred from CSRS to FERS to correct a retirement coverage error.
- Sec. 103. Effect of an election to be transferred from CSRS-Offset to FERS to correct a retirement coverage error.
- Sec. 104. Effect of an election to be transferred from CSRS to CSRS-Offset to correct a retirement coverage error.
- Sec. 105. Effect of an election to be restored (or transferred) to CSRS-Offset after having been corrected to FERS from CSRS-Offset (or CSRS).
- Sec. 106. Effect of election to remain FERS covered after having been corrected to FERS from CSRS-Offset (or CSRS).

Subtitle B—Employee Who Should Have Been FERS Covered, CSRS-Offset Covered, or CSRS Covered, But Who Was Erroneously Social Security-Only Covered Instead

- Sec. 111. Elections.
- Sec. 112. Effect of an election to become FERS covered to correct the retirement coverage error.
- Sec. 113. Effect of an election to become CSRS-Offset covered to correct the retirement coverage error.
- Sec. 114. Effect of an election to become CSRS covered to correct the retirement coverage error.

Subtitle C—Employee Who Should Have Been Social Security-Only Covered, But Who Was Erroneously FERS Covered, CSRS-Offset Covered, or CSRS Covered Instead

- Sec. 121. Uncorrected error: employee who should be Social Security-Only covered, but who is erroneously FERS covered instead.
- Sec. 122. Uncorrected error: employee who should be Social Security-Only covered, but who is erroneously CSRS-Offset covered instead.

- Sec. 123. Uncorrected error: employee who should be Social Security-Only covered, but who is erroneously CSRS covered instead.
- Sec. 124. Corrected error: situations under sections 121–123.
- Sec. 125. Vested employees excepted from automatic exclusion.

Subtitle D—Employee Who Should Have Been CSRS Covered or CSRS-Offset Covered, But Who Was Erroneously FERS Covered Instead

- Sec. 131. Elections.
- Sec. 132. Effect of an election to be transferred from FERS to CSRS to correct a retirement coverage error.
- Sec. 133. Effect of an election to be transferred from FERS to CSRS-Offset to correct a retirement coverage error.
- Sec. 134. Effect of an election to be restored to FERS after having been corrected to CSRS.
- Sec. 135. Effect of an election to be restored to FERS after having been corrected to CSRS-Offset.
- Sec. 136. Disqualification of certain individuals to whom same election was previously available.

Subtitle E—Employee Who Should Have Been CSRS-Offset Covered, But Who Was Erroneously CSRS Covered Instead

- Sec. 141. Automatic transfer to CSRS-Offset.
- Sec. 142. Effect of transfer.

Subtitle F—Employee Who Should Have Been CSRS Covered, But Who Was Erroneously CSRS-Offset Covered Instead

- Sec. 151. Elections.
- Sec. 152. Effect of an election to be transferred from CSRS-Offset to CSRS to correct the retirement coverage error.
- Sec. 153. Effect of an election to be restored to CSRS-Offset after having been corrected to CSRS.

Subtitle G—Additional Provisions Relating to Government Agencies

- Sec. 161. Repayment required in certain situations.
- Sec. 162. Equitable sharing of amounts payable from the Government if more than one agency involved.
- Sec. 163. Provisions relating to the original responsible agency.

TITLE II—GENERAL PROVISIONS

- Sec. 201. Identification and notification requirements.
- Sec. 202. Individual appeal rights.
- Sec. 203. Information to be furnished by Government agencies to authorities administering this Act.
- Sec. 204. Social Security records.
- Sec. 205. Conforming amendments respecting Social Security coverage and OASDI taxes.
- Sec. 206. Regulations.
- Sec. 207. All elections to be approved by OPM.
- Sec. 208. Additional transfers to OASDI trust funds in certain cases.
- Sec. 209. Technical and conforming amendments.

TITLE III—OTHER PROVISIONS

Sec. 301. Provisions to permit continued conformity of other Federal retirement systems.

Sec. 302. Provisions to prevent reductions in force and any unfunded liability in the CSRDF.

Sec. 303. Individual right of action preserved for amounts not otherwise provided for under this Act.

Sec. 304. Extension of open enrollment period to employees under the Foreign Service Retirement and Disability System.

TITLE IV—TAX PROVISIONS

Sec. 401. Tax provisions.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) CSRS.—The term “CSRS” means the Civil
4 Service Retirement System.

5 (2) CSRDF.—The term “CSRDF” means the
6 Civil Service Retirement and Disability Fund.

7 (3) CSRS COVERED.—The term “CSRS cov-
8 ered”, with respect to any service, means service
9 that is subject to the provisions of subchapter III of
10 chapter 83 of title 5, United States Code, other than
11 those that apply only with respect to an individual
12 described in section 8402(b)(2) of such title.

13 (4) CSRS-OFFSET COVERED.—The term
14 “CSRS-Offset covered”, with respect to any service,
15 means service that is subject to the provisions of
16 subchapter III of chapter 83 of title 5, United
17 States Code, that apply with respect to an individual
18 described in section 8402(b)(2) of such title.

19 (5) EMPLOYEE.—The term “employee” means
20 an employee as defined by section 8331 or 8401 of

1 title 5, United States Code, and any other individual
2 (not satisfying either of those definitions) serving in
3 an appointive or elective office or position in the ex-
4 ecutive, legislative, or judicial branch of the Govern-
5 ment who, by virtue of that service, is permitted or
6 required to be CSRS covered, CSRS-Offset covered,
7 FERS covered, or Social Security-Only covered.

8 (6) EXECUTIVE DIRECTOR.—The term “Execu-
9 tive Director of the Federal Retirement Thrift In-
10 vestment Board” or “Executive Director” means the
11 Executive Director appointed under section 8474 of
12 title 5, United States Code.

13 (7) FERS.—The term “FERS” means the
14 Federal Employees’ Retirement System.

15 (8) FERS COVERED.—The term “FERS cov-
16 ered”, with respect to any service, means service
17 that is subject to chapter 84 of title 5, United States
18 Code.

19 (9) GOVERNMENT.—The term “Government”
20 has the meaning given such term by section 8331(7)
21 of title 5, United States Code.

22 (10) OASDI TAXES.—The term “OASDI
23 taxes” means the OASDI employee tax and the
24 OASDI employer tax.

1 (11) OASDI EMPLOYEE TAX.—The term
2 “OASDI employee tax” means the tax imposed
3 under section 3101(a) of the Internal Revenue Code
4 of 1986 (relating to Old-Age, Survivors and Disabil-
5 ity Insurance).

6 (12) OASDI EMPLOYER TAX.—The term
7 “OASDI employer tax” means the tax imposed
8 under section 3111(a) of the Internal Revenue Code
9 of 1986 (relating to Old-Age, Survivors and Disabil-
10 ity Insurance).

11 (13) OASDI TRUST FUNDS.—The term
12 “OASDI trust funds” means the Federal Old-Age
13 and Survivors Insurance Trust Fund and the Fed-
14 eral Disability Insurance Trust Fund.

15 (14) PERIOD OF ERRONEOUS COVERAGE.—The
16 term “period of erroneous coverage” means, in the
17 case of a retirement coverage error, the period
18 throughout which retirement coverage is in effect
19 pursuant to such error (or would have been in effect,
20 but for such error).

21 (15) RETIREMENT COVERAGE DETERMINA-
22 TION.—The term “retirement coverage determina-
23 tion” means a determination by an employee or
24 agent of the Government as to whether a particular
25 type of Government service is CSRS covered, CSRS-

1 Offset covered, FERS covered, or Social Security-
2 Only covered.

3 (16) RETIREMENT COVERAGE ERROR.—The
4 term “retirement coverage error” means a retire-
5 ment coverage determination that, as a result of any
6 error, misrepresentation, or inaction on the part of
7 an employee or agent of the Government (including
8 an error as described in section 163(b)(2)), causes
9 an individual erroneously to be enrolled or not en-
10 rolled in a retirement system, as further described in
11 the applicable subtitle of title I.

12 (17) SOCIAL SECURITY-ONLY COVERED.—The
13 term “Social Security-Only covered”, with respect to
14 any service, means Government service that con-
15 stitutes employment under section 210 of the Social
16 Security Act (42 U.S.C. 410), and that—

17 (A) is subject to OASDI taxes; but

18 (B) is not subject to any retirement system
19 for Government employees (disregarding title II
20 of the Social Security Act).

21 (18) THRIFT SAVINGS FUND.—The term
22 “Thrift Savings Fund” means the Thrift Savings
23 Fund established under section 8437 of title 5,
24 United States Code.

1 **SEC. 3. APPLICABILITY.**

2 (a) IN GENERAL.—Subject to subsection (b), this Act
3 shall apply with respect to any retirement coverage error
4 that occurs before, on, or after the date of enactment of
5 this Act, excluding any error corrected within 1 year after
6 the date on which it occurs.

7 (b) LIMITATION.—Nothing in this Act shall affect
8 any retirement coverage or treatment accorded with re-
9 spect to any individual in connection with any period be-
10 ginning before the first day of the first applicable pay pe-
11 riod beginning on or after January 1, 1984.

12 **SEC. 4. RESTRICTION RELATING TO FUTURE CORREC-**
13 **TIONS.**

14 (a) IN GENERAL.—Except as otherwise provided in
15 this Act, any individual who, on or after the date of enact-
16 ment of this Act, becomes or remains affected by a retire-
17 ment coverage error may not be excluded from or made
18 subject to any retirement system for the sole purpose of
19 correcting such error.

20 (b) COORDINATION WITH OTHER LAWS.—

21 (1) IN GENERAL.—Nothing in this Act shall be
22 considered to preclude an election under the Federal
23 Employees' Retirement System Open Enrollment
24 Act of 1997 (Public Law 105–61; 111 Stat. 1318)
25 or any other voluntary retirement coverage election
26 authorized by statute.

1 (2) REGULATIONS.—The Office of Personnel
2 Management shall prescribe any regulations which
3 may be necessary to apply this Act in the case of
4 any individual who changes retirement coverage pur-
5 suant to a voluntary election made other than under
6 this Act.

7 **SEC. 5. IRREVOCABILITY OF ELECTIONS.**

8 Any election made (or deemed to have been made)
9 under this Act by an employee or any other individual
10 shall be irrevocable.

11 **TITLE I—DESCRIPTION OF RE-**
12 **TIREMENT COVERAGE ER-**
13 **RORS TO WHICH THIS ACT AP-**
14 **PLIES AND MEASURES FOR**
15 **THEIR RECTIFICATION**

16 **Subtitle A—Employee Who Should**
17 **Have Been FERS Covered, But**
18 **Who Was Erroneously CSRS**
19 **Covered or CSRS-Offset Cov-**
20 **ered Instead**

21 **SEC. 101. ELECTIONS.**

22 (a) APPLICABILITY.—This subtitle shall apply in the
23 case of any employee who—

1 (1) should be (or should have been) FERS cov-
2 ered but, as a result of a retirement coverage error,
3 is (or was) CSRS covered instead; or

4 (2) should be (or should have been) FERS cov-
5 ered but, as a result of a retirement coverage error,
6 is (or was) CSRS-Offset covered instead.

7 (b) UNCORRECTED ERROR.—If, at the time of mak-
8 ing an election under this section, the retirement coverage
9 error described in paragraph (1) or (2) of subsection (a)
10 (as applicable) has not been corrected, the employee af-
11 fected by such error may elect—

12 (1) to be FERS covered instead; or

13 (2) to remain (or instead become) CSRS-Offset
14 covered.

15 (c) CORRECTED ERROR.—If, at the time of making
16 an election under this section, the retirement coverage
17 error described in paragraph (1) or (2) of subsection (a)
18 (as applicable) has been corrected, the employee affected
19 by such error may elect—

20 (1) to be CSRS-Offset covered instead; or

21 (2) to remain FERS covered.

22 (d) DEFAULT RULE.—

23 (1) IN GENERAL.—If the employee is given
24 written notice in accordance with section 201 as to
25 the availability of an election under this section, but

1 does not make any such election within the 6-month
 2 period beginning on the date on which such notice
 3 is so given, the option under subsection (b)(2) or
 4 (c)(2), as applicable, shall be deemed to have been
 5 elected on the last day of such period.

6 (2) CSRS NOT AN OPTION.—Nothing in this
 7 section shall be considered to afford an employee the
 8 option of becoming or remaining CSRS covered.

9 (e) RETROACTIVE EFFECT.—An election under this
 10 section (including an election by default, and an election
 11 to remain covered by the retirement system by which the
 12 electing individual is covered as of the date of the election)
 13 shall be effective retroactive to the effective date of the
 14 retirement coverage error (as referred to in subsection (a))
 15 to which such election relates.

16 **SEC. 102. EFFECT OF AN ELECTION TO BE TRANSFERRED**
 17 **FROM CSRS TO FERS TO CORRECT A RETIRE-**
 18 **MENT COVERAGE ERROR.**

19 (a) APPLICABILITY.—This section shall apply in the
 20 case of any employee affected by an error described in sec-
 21 tion 101(a)(1) who elects the option under section
 22 101(b)(1).

23 (b) DISPOSITION OF CONTRIBUTIONS TO THE
 24 CSRDF.—

25 (1) EMPLOYEE CONTRIBUTIONS.—

1 (A) TRANSFER TO OASDI TRUST FUNDS.—

2 There shall be transferred from the CSRDF to
3 the OASDI trust funds an amount equal to the
4 amount of the OASDI employee tax that should
5 have been deducted and withheld from the Fed-
6 eral wages of the employee for the period of er-
7 roneous coverage involved.

8 (B) RULE IF THERE ARE EXCESS CSRDF
9 CONTRIBUTIONS.—

10 (i) IN GENERAL.—Any excess amount
11 described in clause (ii) that is attributable
12 to an employee described in subsection (a)
13 shall be forfeited.

14 (ii) EXCESS AMOUNT DEFINED.—The
15 excess amount described in this clause is,
16 in the case of an employee, the amount by
17 which—

18 (I) that portion of the employee's
19 lump-sum credit that is attributable
20 to the period of erroneous coverage in-
21 volved, exceeds (if at all)

22 (II) the total of the amount de-
23 scribed in subparagraph (A) plus the
24 amount that should have been de-
25 ducted under section 8422 of title 5,

1 United States Code, from the pay of
2 the employee for the period of erro-
3 neous coverage involved.

4 (C) RULE IF LUMP-SUM CREDIT IS LESS
5 THAN TOTAL EMPLOYEE CONTRIBUTIONS TO
6 OASDI AND CSRDF THAT SHOULD HAVE BEEN
7 MADE.—

8 (i) IN GENERAL.—

9 (I) SHORTFALL TO BE MADE UP
10 BY AGENCY.—If the amount described
11 in subparagraph (B)(ii)(I) is less than
12 the total amount described in sub-
13 paragraph (B)(ii)(II), an amount
14 equal to the shortfall shall be made up
15 (in such manner as the Commissioner
16 of Social Security shall prescribe) by
17 the agency in or under which the em-
18 ployee is then employed, out of
19 amounts otherwise available in the ap-
20 propriation, fund, or account from
21 which any OASDI employer tax or
22 contribution to the CSRDF (as appli-
23 cable) may be made, except as pro-
24 vided in subclause (II) or clause
25 (iii)(I).

1 (II) REDUCTION FOR DEPOSIT
2 DUE.—In any case in which a deposit
3 is required under clause (ii), the
4 amount required to be made up under
5 subclause (I) shall be reduced by the
6 amount of the deposit so required
7 (but not below zero).

8 (ii) DEPOSIT REQUIREMENT.—

9 (I) IN GENERAL.—To the extent
10 that the shortfall under clause (i) is
11 due to the any lump-sum credit re-
12 ceived by the employee (for which an
13 appropriate deposit under section
14 8334(d)(1) of title 5, United States
15 Code, has not been made), the em-
16 ployee shall be required to repay an
17 amount equal to the amount of such
18 deposit, except as provided in clause
19 (iii)(I).

20 (II) TREATMENT AS A DEBT
21 DUE.—If an employee fails to pay the
22 amount required under subclause (I),
23 that amount shall be recoverable by
24 the CSRDF under the same authori-
25 ties (including to waive a right of re-

1 covery) as described in section
2 114(b)(2). For purposes of any exer-
3 cise of authority under the preceding
4 sentence, the Director of the Office of
5 Personnel Management shall be con-
6 sidered the head of the agency con-
7 cerned.

8 (iii) SPECIAL RULES.—

9 (I) DEPOSIT FOR FERS DEDUC-
10 TIONS NOT MANDATORY.—Nothing in
11 this subparagraph shall, in any situa-
12 tion described in clause (ii), be consid-
13 ered to require any agency make-up
14 payment (or employee repayment) of
15 any portion of the lump-sum credit
16 (beyond any amount necessary in
17 order to permit the transfer described
18 in paragraph (1)(A)) which would be
19 assignable to amounts that should
20 have been deducted under section
21 8422 of title 5, United States Code,
22 from pay of the employee involved.

23 (II) AUTHORITY TO MAKE FERS
24 DEPOSIT.—An employee under this
25 section who has received a lump-sum

1 credit (described in clause (ii)(I)) may
2 not be credited, under chapter 84 of
3 title 5, United States Code, with any
4 period of service to which that lump-
5 sum credit relates unless the employee
6 deposits into the CSRDF an amount
7 equal to the percentage of such em-
8 ployee's basic pay (for such period of
9 service) that should have been de-
10 ducted under section 8422 of title 5,
11 United States Code.

12 (D) DEFINITION OF LUMP-SUM CREDIT.—
13 For purposes of this paragraph, the term
14 “lump-sum credit” has the meaning given such
15 term by section 8331 of title 5, United States
16 Code, except as the context may otherwise indi-
17 cate.

18 (E) PROVISIONS RELATING TO THE APPLI-
19 CATION OF THIS PARAGRAPH IN OTHER SITUA-
20 TIONS.—

21 (i) GENERAL AUTHORITY.—To the ex-
22 tent necessary to permit the operation of
23 this paragraph in any situation covered by
24 any other provisions of this Act (which in-
25 corporate this paragraph by reference),

1 any necessary technical and conforming
2 amendments to this paragraph not other-
3 wise specifically provided for (such as cita-
4 tions to appropriate provisions of law cor-
5 responding to provisions cited in this para-
6 graph) shall be made under regulations
7 which the Office of Personnel Management
8 shall prescribe.

9 (ii) SPECIAL RULE.—

10 (I) DEPOSITS NOT PRECLUDED
11 BY FERS RESTRICTION.—Nothing in
12 section 8424(a) of title 5, United
13 States Code, shall, in any situation
14 covered by this Act, prevent the mak-
15 ing of any deposit (and crediting, for
16 retirement purposes, of service for the
17 corresponding period of time) to the
18 extent that the deposit relates to the
19 period of erroneous coverage involved.

20 (II) EXCEPTION.—The preceding
21 sentence shall not apply in any situa-
22 tion in which the employee involved
23 was erroneously FERS covered, and
24 remained FERS covered after the rec-
25 tification provided for under this Act.

1 (2) GOVERNMENT CONTRIBUTIONS.—

2 (A) TRANSFER TO OASDI TRUST FUNDS.—

3 There shall be transferred from the CSRDF to
4 the OASDI trust funds the excess of—

5 (i) the amount of the OASDI em-
6 ployer tax that should have been paid with
7 respect to the employee for the period of
8 erroneous coverage involved, over

9 (ii) the amount of the OASDI em-
10 ployer tax that may be assessed under sec-
11 tion 6501 of the Internal Revenue Code of
12 1986 in connection with such employee,
13 determined in such manner as the Secretary of
14 the Treasury shall by regulation prescribe.

15 (B) RULE IF CSRDF CONTRIBUTIONS AC-
16 TUALLY MADE ARE LESS THAN TOTAL GOVERN-
17 MENT CONTRIBUTIONS TO OASDI AND CSRDF
18 THAT SHOULD HAVE BEEN MADE.—

19 (i) IN GENERAL.—If the total Govern-
20 ment contributions to the CSRDF that
21 were made with respect to the employee for
22 the period of erroneous coverage involved
23 are less than the amount described in
24 clause (ii), an amount equal to the short-
25 fall shall be made up (in such manner as

1 the Commissioner of Social Security shall
2 prescribe) by the agency in or under which
3 the employee is then employed.

4 (ii) DESCRIPTION OF AMOUNT.—The
5 amount described in this clause is the total
6 of—

7 (I) the amount required to be
8 transferred under subparagraph (A),
9 plus

10 (II) the amount that should have
11 been contributed by the Government
12 under section 8423 of title 5, United
13 States Code, for such employee with
14 respect to such period.

15 (iii) SOURCE OF PAYMENTS.—Any
16 amount required to be paid by an agency
17 under clause (i) shall be payable out of any
18 appropriation, fund, or account available to
19 such agency for making Government con-
20 tributions to the CSRDF or the OASDI
21 trust funds (as appropriate).

22 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-
23 INGS FUND.—

24 (1) IN GENERAL.—An employee to whom this
25 section applies is entitled to have contributed to the

1 Thrift Savings Fund on such employee's behalf, in
2 addition to any regular employee or Government
3 contributions that would be permitted or required
4 for the year in which the contributions under this
5 subsection are made, an amount equal to the sum
6 of—

7 (A) the amount determined under para-
8 graph (2) with respect to such employee for the
9 period of erroneous coverage involved;

10 (B) an amount equal to the total contribu-
11 tions that should have been made for such em-
12 ployee under section 8432(c)(1) of title 5,
13 United States Code, for the period of erroneous
14 coverage involved;

15 (C) an amount equal to the total contribu-
16 tions that should have been made for such em-
17 ployee under section 8432(c)(2) of title 5,
18 United States Code, for the period of erroneous
19 coverage involved (taking into account both the
20 amount referred to in subparagraph (A) and
21 any contributions to the Thrift Savings Fund
22 actually made by such employee with respect to
23 the period involved); and

24 (D) an amount equal to lost earnings on
25 the amounts referred to in subparagraphs (A)

1 through (C), determined in accordance with
2 paragraph (3).

3 (2) AMOUNT BASED ON AVERAGE PERCENTAGE
4 OF PAY CONTRIBUTED BY EMPLOYEES DURING PE-
5 RIOD OF ERRONEOUS COVERAGE.—

6 (A) IN GENERAL.—The amount deter-
7 mined under this paragraph with respect to an
8 employee for a period of erroneous coverage
9 shall be equal to the amount of the contribu-
10 tions such employee would have made if, during
11 each calendar year in such period, the employee
12 had contributed the percentage of such employ-
13 ee's basic pay for such year specified in sub-
14 paragraph (B) (determined disregarding any
15 contributions actually made by such employee
16 with respect to the year involved).

17 (B) PERCENTAGE TO BE APPLIED.—

18 (i) IN GENERAL.—The percentage to
19 be applied under this subparagraph in the
20 case of any employee with respect to a par-
21 ticular year is—

22 (I) the average percentage of
23 basic pay that was contributed for
24 such year under section 8432(a) of
25 title 5, United States Code, by full-

1 time FERS covered employees who
2 contributed to the Thrift Savings
3 Fund in such year and for whom a
4 salary rate is recorded (as of June 30
5 of such year) in the central personnel
6 data file maintained by the Office of
7 Personnel Management; or

8 (II) if such average percentage
9 for the year in question is unavailable,
10 the average percentage for the most
11 recent year prior to the year in ques-
12 tion that is available.

13 (ii) PERCENTAGE CONTRIBUTED.—

14 For purposes of clause (i)(I), the percent-
15 age of basic pay for each employee in-
16 cluded in the average shall be determined
17 by dividing the total employee contribu-
18 tions received into the Thrift Savings Plan
19 account of that employee during such year
20 by the annual salary rate for that employee
21 as recorded in the central personnel data
22 file (referred to in clause (i)(I)) as of June
23 30 of such year.

24 (C) LIMITATIONS.—In no event may the
25 amount determined under this paragraph for an

1 individual with respect to a year exceed the
2 amount that, if added to the amount of the con-
3 tributions that were actually made by such indi-
4 vidual to the Thrift Savings Fund with respect
5 to such year (if any), would cause the total to
6 exceed—

7 (i) any limitation under section 415 or
8 any other provision of the Internal Reve-
9 nue Code of 1986 that would have applied
10 to such employee with respect to such year;
11 or

12 (ii) any limitation under section
13 8432(a) or any other provision of title 5,
14 United States Code, that would have ap-
15 plied to such employee with respect to such
16 year.

17 (3) LOST EARNINGS.—

18 (A) IN GENERAL.—Lost earnings on any
19 amounts referred to in subparagraph (A), (B),
20 or (C) of paragraph (1) shall, to the extent
21 those amounts are attributable to contributions
22 that should have been made with respect to a
23 particular year, be determined in the same way
24 as if those amounts had in fact been timely con-

1 tributed and allocated among the TSP invest-
2 ment funds in accordance with—

3 (i) the investment fund election that
4 was accepted by the employing agency be-
5 fore the date the contribution should have
6 been made and that was still in effect as
7 of that date; or

8 (ii) if no such election was then in ef-
9 fect for the employee, the investment fund
10 election attributed to such employee with
11 respect to such year.

12 (B) INVESTMENT FUND ELECTION ATTRIB-
13 UTED.—For purposes of subparagraph (A)(ii),
14 the investment fund election attributed to an
15 employee with respect to a particular year is—

16 (i) the average percentage allocation
17 of TSP contributions among the TSP in-
18 vestment funds from all sources, with re-
19 spect to that year, except that the invest-
20 ment fund election attributed to contribu-
21 tions in years prior to 1991 shall be the G
22 Fund; or

23 (ii) if such average percentage alloca-
24 tion for the year in question is unavailable,
25 the average percentage allocation for the

1 most recent year prior to the year in ques-
2 tion that is available.

3 (C) DEFINITION OF INVESTMENT FUND
4 ELECTION, ETC.—For purposes of this para-
5 graph—

6 (i) the term “investment fund elec-
7 tion” means a choice by a participant con-
8 cerning how contributions to the Thrift
9 Savings Plan shall be allocated among the
10 TSP investment funds;

11 (ii) the term “participant” means any
12 person with an account in the Thrift Sav-
13 ings Plan, or who would have an account
14 in the Thrift Savings Plan but for an em-
15 ploying agency error (including an error as
16 described in section 163(b)(2));

17 (iii) the term “TSP investment
18 funds” means the C Fund, the F Fund,
19 the G Fund, and any other investment
20 fund in the Thrift Savings Plan created
21 after December 27, 1996; and

22 (iv) the terms “C Fund”, “F Fund”,
23 and “G Fund” refer to the funds described
24 in paragraphs (1), (3), and (4), respec-

1 tively, of section 8438(a) of title 5, United
2 States Code.

3 (4) MAKEUP CONTRIBUTION TO BE MADE IN A
4 LUMP SUM.—

5 (A) IN GENERAL.—Any amount to which
6 an employee is entitled under this subsection
7 shall be paid promptly by the agency in or
8 under which the electing employee is (as of the
9 date of the election) employed, in a lump sum,
10 upon notification to such agency under sub-
11 paragraph (B)(ii) as to the amount due.

12 (B) BOARD FUNCTIONS.—The regulations
13 under paragraph (6) shall include provisions
14 under which—

15 (i) each employing agency shall be re-
16 quired to determine and notify the Federal
17 Retirement Thrift Investment Board, in a
18 timely manner, as to any amounts under
19 paragraph (1)(A)–(C) owed by such agen-
20 cy; and

21 (ii) the Board shall, based on the in-
22 formation it receives from an agency under
23 clause (i), determine lost earnings on those
24 amounts and promptly notify such agency

1 as to the total amounts due from it under
2 this subsection.

3 (5) JUSTICES AND JUDGES; MAGISTRATES;
4 ETC.—The preceding provisions of this subsection
5 shall not apply in the case of any employee who,
6 pursuant to the election referred to in subsection
7 (a), becomes subject to section 8440a, 8440b,
8 8440c, or 8440d of title 5, United States Code.

9 (6) REGULATIONS.—The Executive Director of
10 the Federal Retirement Thrift Investment Board
11 shall prescribe any regulations necessary to carry
12 out this subsection.

13 **SEC. 103. EFFECT OF AN ELECTION TO BE TRANSFERRED**
14 **FROM CSRS-OFFSET TO FERS TO CORRECT A**
15 **RETIREMENT COVERAGE ERROR.**

16 (a) APPLICABILITY.—This section shall apply in the
17 case of any employee affected by an error described in sec-
18 tion 101(a)(2) who elects the option under section
19 101(b)(1).

20 (b) EFFECT OF ELECTION.—In the case of an em-
21 ployee described in subsection (a), the following provisions
22 shall apply:

23 (1) Section 102(b) (relating to disposition of
24 contributions to the CSRDF), but disregarding pro-
25 visions relating to transfers to OASDI trust funds.

1 (2) Section 102(c) (relating to makeup con-
2 tributions to the Thrift Savings Fund).

3 **SEC. 104. EFFECT OF AN ELECTION TO BE TRANSFERRED**
4 **FROM CSRS TO CSRS-OFFSET TO CORRECT A**
5 **RETIREMENT COVERAGE ERROR.**

6 (a) APPLICABILITY.—This section shall apply in the
7 case of any employee affected by an error described in sec-
8 tion 101(a)(1) who elects the option under section
9 101(b)(2).

10 (b) SAME AS IN THE CASE OF AN ELECTION TO RAT-
11 IFY ERRONEOUS CSRS-OFFSET COVERAGE.—

12 (1) IN GENERAL.—The effect of an election de-
13 scribed in subsection (a) shall be as described in sec-
14 tion 101(b)(2), except that the provisions of section
15 102(b) shall also apply.

16 (2) APPROPRIATE PERCENTAGES TO BE USED
17 IN DETERMINING EMPLOYEE AND GOVERNMENT
18 CONTRIBUTIONS TO CSRDF.—For purposes of para-
19 graph (1), section 102(b) shall be applied by sub-
20 stituting “the relevant provisions of section
21 8334(k)” for “section 8422” and “section 8423”.

1 **SEC. 105. EFFECT OF AN ELECTION TO BE RESTORED (OR**
2 **TRANSFERRED) TO CSRS-OFFSET AFTER HAV-**
3 **ING BEEN CORRECTED TO FERS FROM CSRS-**
4 **OFFSET (OR CSRS).**

5 (a) **APPLICABILITY.**—This section shall apply in the
6 case of any employee affected by an error described in
7 paragraph (1) or (2) of section 101(a) who (after having
8 been corrected to FERS coverage) elects the option under
9 section 101(c)(1).

10 (b) **DISPOSITION OF CONTRIBUTIONS TO THE**
11 **CSRDF.**—

12 (1) **IN GENERAL.**—The provisions of section
13 102(b) shall apply in the case of an employee de-
14 scribed in subsection (a), subject to paragraph (2).

15 (2) **NO TRANSFERS FOR AMOUNTS ALREADY**
16 **PAID INTO OASDI, ETC.**—For purposes of paragraph
17 (1), section 102(b) shall be applied in conformance
18 with the following:

19 (A) **NO DOUBLE PAYMENTS INTO OASDI.**—

20 To the extent that the appropriate OASDI em-
21 ployee or employer tax has already been paid
22 for the total period involved (or any portion
23 thereof), reduce the respective amounts re-
24 quired by paragraphs (1)(A) and (2)(A)(i) of
25 section 102(b) accordingly.

1 (B) APPROPRIATE PERCENTAGES TO BE
2 USED IN DETERMINING EMPLOYEE AND GOV-
3 ERNMENT CONTRIBUTIONS TO CSRDF.—Sub-
4 stitute “the relevant provisions of section
5 8334(k)” for “section 8422” and “section
6 8423”.

7 (C) APPROPRIATE LUMP-SUM CREDIT TO
8 BE USED.—The appropriate lump-sum credit to
9 be used under this subsection shall be deter-
10 mined in accordance with regulations to be pre-
11 scribed by the Office of Personnel Management.

12 (D) PROVISIONS TO BE APPLIED WITH RE-
13 SPECT TO THE TOTAL PERIOD INVOLVED.—
14 Substitute “total period involved (as defined by
15 section 105)” for “period of erroneous coverage
16 involved”.

17 (c) DISPOSITION OF EXCESS TSP CONTRIBU-
18 TIONS.—

19 (1) GOVERNMENT CONTRIBUTIONS.—All Gov-
20 ernment contributions made on behalf of the em-
21 ployee to the Thrift Savings Fund that are attrib-
22 utable to the total period involved (including any
23 earnings thereon) shall be forfeited. For the purpose
24 of section 8437(d) of title 5, United States Code,
25 amounts so forfeited shall be treated as if they were

1 amounts forfeited under section 8432(g) of such
2 title.

3 (2) EMPLOYEE CONTRIBUTIONS.—The election
4 referred to in subsection (a) shall not be taken into
5 account for purposes of any determination relating
6 to the disposition of any employee contributions to
7 the Thrift Savings Fund, attributable to the total
8 period involved, that were in excess of the maximum
9 amount that would have been allowable under appli-
10 cable provisions of subchapter III of chapter 83 of
11 title 5, United States Code (including any earnings
12 thereon).

13 (d) DEFINITION OF TOTAL PERIOD INVOLVED.—For
14 purposes of this section, the term “total period involved”
15 means the period beginning on the effective date of the
16 retirement coverage error involved and ending on the day
17 before the date on which the election described in sub-
18 section (a) is made.

19 **SEC. 106. EFFECT OF ELECTION TO REMAIN FERS COV-**
20 **ERED AFTER HAVING BEEN CORRECTED TO**
21 **FERS FROM CSRS-OFFSET (OR CSRS).**

22 (a) APPLICABILITY.—This section shall apply in the
23 case of any employee affected by an error described in
24 paragraph (1) or (2) of section 101(a) who (after having

1 been corrected to FERS coverage) elects the option under
 2 section 101(c)(2).

3 (b) DISPOSITION OF CONTRIBUTIONS TO THE
 4 CSRDF.—The provisions of section 102(b) shall apply in
 5 the case of an employee described in subsection (a), sub-
 6 ject to the same condition as set forth in section
 7 105(b)(2)(A).

8 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-
 9 INGS FUND.—Section 102(c) shall apply, except that an
 10 agency shall receive credit for any automatic or matching
 11 Government contributions and any lost earnings paid by
 12 such agency as part of any corrections process previously
 13 carried out with respect to the employee involved.

14 **Subtitle B—Employee Who Should**
 15 **Have Been FERS Covered,**
 16 **CSRS-Offset Covered, or CSRS**
 17 **Covered, But Who Was Erro-**
 18 **neously Social Security-Only**
 19 **Covered Instead**

20 **SEC. 111. ELECTIONS.**

21 (a) APPLICABILITY.—This subtitle shall apply in the
 22 case of any employee who—

23 (1) should be (or should have been) FERS cov-
 24 ered but, as a result of a retirement coverage error,
 25 is (or was) Social Security-Only covered instead;

1 (2) should be (or should have been) CSRS-Off-
 2 set covered but, as a result of a retirement coverage
 3 error, is (or was) Social Security-Only covered in-
 4 stead; or

5 (3) should be (or should have been) CSRS cov-
 6 ered but, as a result of a retirement coverage error,
 7 is (or was) Social Security-Only covered instead.

8 (b) UNCORRECTED ERROR.—If, at the time of mak-
 9 ing an election under this section, the retirement coverage
 10 error described in paragraph (1), (2), or (3) of subsection
 11 (a) (as applicable) has not been corrected, the employee
 12 affected by such error may elect—

13 (1)(A) in the case of an error described in sub-
 14 section (a)(1), to be FERS covered as well;

15 (B) in the case of an error described in sub-
 16 section (a)(2), to be CSRS-Offset covered as well; or

17 (C) in the case of an error described in sub-
 18 section (a)(3), to be CSRS covered instead; or

19 (2) to remain Social Security-Only covered.

20 (c) CORRECTED ERROR.—

21 (1) IN GENERAL.—Not later than 6 months
 22 after the date of enactment of this Act, there shall
 23 be submitted to the Congress a proposal (including
 24 any necessary draft legislation) to carry out the pol-
 25 icy described in paragraph (2).

1 (2) POLICY.—Under the proposal, any employee
2 with respect to whom the retirement coverage error
3 described in paragraph (1), (2), or (3) of subsection
4 (a) (as applicable) has already been corrected, but
5 under terms less advantageous to the employee than
6 would have been the case under this Act, shall be af-
7 forded a reasonable opportunity to obtain treatment
8 comparable to the treatment afforded under this
9 Act.

10 (3) JOINT ACTION.—This subsection shall be
11 carried out by the Director of the Office of Person-
12 nel Management, in consultation with the Executive
13 Director of the Federal Retirement Thrift Invest-
14 ment Board and the Commissioner of Social Secu-
15 rity.

16 (d) DEFAULT RULE.—In the case of any employee
17 to whom subsection (b) applies, if the employee is given
18 written notice in accordance with section 201 as to the
19 availability of an election under this section, but does not
20 make any such election within the 6-month period begin-
21 ning on the date on which such notice is so given, the
22 option under subsection (b)(2) shall be deemed to have
23 been elected on the last day of such period.

24 (e) RETROACTIVE EFFECT.—An election under this
25 section (including an election by default, and an election

1 to remain covered by the retirement system by which the
2 electing individual is covered as of the date of the election)
3 shall be effective retroactive to the effective date of the
4 retirement coverage error (as referred to in subsection (a))
5 to which such election relates.

6 **SEC. 112. EFFECT OF AN ELECTION TO BECOME FERS COV-**
7 **ERED TO CORRECT THE RETIREMENT COV-**
8 **ERAGE ERROR.**

9 (a) **APPLICABILITY.**—This section shall apply in the
10 case of any employee affected by an error described in sec-
11 tion 111(a)(1) who elects the option under section
12 111(b)(1)(A).

13 (b) **MAKEUP CONTRIBUTIONS TO THE CSRDF.**—
14 Upon notification that an employee has made an election
15 under this section, the agency in or under which such em-
16 ployee is employed shall promptly pay to the CSRDF, in
17 a lump sum, an amount equal to the sum of—

18 (1) the amount that should have been deducted
19 and withheld from the pay of the employee for the
20 period of erroneous coverage involved under section
21 8422 of title 5, United States Code; and

22 (2) the Government contributions that should
23 have been paid for the period of erroneous coverage
24 involved under section 8423 of title 5, United States
25 Code.

1 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-
 2 INGS FUND.—Section 102(c) shall apply in the case of an
 3 employee described in subsection (a).

4 **SEC. 113. EFFECT OF AN ELECTION TO BECOME CSRS-OFF-**
 5 **SET COVERED TO CORRECT THE RETIRE-**
 6 **MENT COVERAGE ERROR.**

7 (a) APPLICABILITY.—This section shall apply in the
 8 case of any employee affected by an error described in sec-
 9 tion 111(a)(2) who elects the option under section
 10 111(b)(1)(B).

11 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—
 12 Upon notification that an employee has made an election
 13 under this section, the agency in or under which such em-
 14 ployee is employed shall promptly pay to the CSRDF, in
 15 a lump sum, an amount equal to the sum of—

16 (1) the amount that should have been deducted
 17 and withheld from the pay of the employee for the
 18 period of erroneous coverage involved under section
 19 8334 of title 5, United States Code; and

20 (2) the Government contributions that should
 21 have been paid under section 8334 of title 5, United
 22 States Code, for the period of erroneous coverage in-
 23 volved.

24 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-
 25 INGS FUND.—

1 (1) IN GENERAL.—Makeup contributions to the
 2 Thrift Savings Fund shall be made by the employing
 3 agency in the same manner as described in section
 4 102(c) (but disregarding subparagraphs (B) and (C)
 5 of paragraph (1) thereof, and the other provisions of
 6 section 102(c) to the extent that they relate to those
 7 subparagraphs).

8 (2) APPROPRIATE PERCENTAGES, ETC. TO BE
 9 USED.—For purposes of paragraph (1), section
 10 102(c) shall be applied—

11 (A) by substituting “section 8351(b)” for
 12 “section 8432(a)” and by substituting “CSRS
 13 covered and CSRS-Offset covered” for “FERS
 14 covered” in paragraph (2)(B)(i) thereof; and

15 (B) by substituting “section 8351(b)(2)”
 16 for “section 8432(a)” in paragraph (2)(C)(ii)
 17 thereof.

18 **SEC. 114. EFFECT OF AN ELECTION TO BECOME CSRS COV-**
 19 **ERED TO CORRECT THE RETIREMENT COV-**
 20 **ERAGE ERROR.**

21 (a) APPLICABILITY.—This section shall apply in the
 22 case of any employee affected by an error described in sec-
 23 tion 111(a)(3) who elects the option under section
 24 111(b)(1)(C).

25 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

1 (1) IN GENERAL.—Upon notification that an
2 employee has made an election under this section,
3 the agency in or under which such employee is em-
4 ployed shall promptly pay to the CSRDF, in a lump
5 sum, an amount equal to the sum of—

6 (A) the amount that should have been de-
7 ducted and withheld from the pay of the em-
8 ployee for the period of erroneous coverage in-
9 volved under section 8334 of title 5, United
10 States Code; and

11 (B) the Government contributions that
12 should have been paid under such section for
13 the period of erroneous coverage involved.

14 (2) AGENCY TO BE REIMBURSED FOR CERTAIN
15 AMOUNTS.—

16 (A) IN GENERAL.—The employee for whom
17 the payment under paragraph (1) is made shall
18 repay to the agency (referred to in paragraph
19 (1)) an amount equal to the OASDI employee
20 taxes refunded or refundable to such employee
21 for any portion of the period of erroneous cov-
22 erage involved (computed in such manner as the
23 Director of the Office of Personnel Manage-
24 ment, with the concurrence of the Secretary of
25 the Treasury, shall by regulation prescribe), not

1 to exceed the amount described in paragraph
2 (1)(A).

3 (B) RIGHT OF RECOVERY; WAIVER.—If the
4 employee fails to repay the amount required
5 under subparagraph (A), a sum equal to the
6 amount outstanding is recoverable by the Gov-
7 ernment from the employee (or the employee’s
8 estate, if applicable) by—

9 (i) setoff against accrued pay, com-
10 pensation, amount of retirement credit, or
11 another amount due the employee from the
12 Government; and

13 (ii) such other method as is provided
14 by law for the recovery of amounts owing
15 to the Government.

16 The head of the agency concerned may waive,
17 in whole or in part, a right of recovery under
18 this paragraph if it is shown that recovery
19 would be against equity and good conscience or
20 against the public interest.

21 (C) TREATMENT OF AMOUNTS REPAID OR
22 RECOVERED.—Any amount repaid by, or recov-
23 ered from, an individual (or an estate) under
24 this paragraph shall be credited to the appro-

1 patriation account from which the amount in-
 2 volved was originally paid.

3 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-
 4 INGS FUND.—In the case of an employee described in sub-
 5 section (a), makeup contributions to the Thrift Savings
 6 Fund shall be made in the same manner as described in
 7 section 113(c).

8 **Subtitle C—Employee Who Should**
 9 **Have Been Social Security-Only**
 10 **Covered, But Who Was Erro-**
 11 **neously FERS Covered, CSRS-**
 12 **Offset Covered, or CSRS Cov-**
 13 **ered Instead**

14 **SEC. 121. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD**
 15 **BE SOCIAL SECURITY-ONLY COVERED, BUT**
 16 **WHO IS ERRONEOUSLY FERS COVERED IN-**
 17 **STEAD.**

18 (a) IN GENERAL.—Except as provided in section 125,
 19 this section shall apply in the case of any employee who
 20 should be Social Security-Only covered but, as a result of
 21 a retirement coverage error, is FERS covered instead.

22 (b) AUTOMATIC EXCLUSION FROM FERS.—An em-
 23 ployee described in subsection (a) shall not, by reason of
 24 the retirement coverage error described in subsection (a),

1 be eligible to be treated as an individual who is FERS
2 covered.

3 (c) DISPOSITION OF EMPLOYEE CONTRIBUTIONS TO
4 THE CSRDF.—There shall be paid to the employee, from
5 the CSRDF, any lump-sum credit to which such employee
6 would be entitled under section 8424 of title 5, United
7 States Code, to the extent attributable to the period of
8 erroneous coverage involved.

9 (d) DISPOSITION OF TSP CONTRIBUTIONS.—

10 (1) GOVERNMENT CONTRIBUTIONS.—All Gov-
11 ernment contributions made on behalf of the em-
12 ployee to the Thrift Savings Fund that are attrib-
13 utable to the period of erroneous coverage involved
14 (including any earnings thereon) shall be forfeited in
15 the same manner as described in section 105(c).

16 (2) EMPLOYEE CONTRIBUTIONS.—Notwith-
17 standing any other provision of this section or any
18 other provision of law, any contributions made by
19 the employee to the Thrift Savings Fund during the
20 period of erroneous coverage involved (including any
21 earnings thereon) shall be treated as if such em-
22 ployee had then been correctly covered.

1 **SEC. 122. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD**
2 **BE SOCIAL SECURITY-ONLY COVERED, BUT**
3 **WHO IS ERRONEOUSLY CSRS-OFFSET COV-**
4 **ERED INSTEAD.**

5 (a) IN GENERAL.—Except as provided in section 125,
6 this section shall apply in the case of any employee who
7 should be Social Security-Only covered but, as a result of
8 a retirement coverage error, is CSRS-Offset covered in-
9 stead.

10 (b) AUTOMATIC EXCLUSION FROM CSRS-OFFSET.—
11 An employee described in subsection (a) shall not, by rea-
12 son of the retirement coverage error described in sub-
13 section (a), be eligible to be treated as an individual who
14 is CSRS-Offset covered.

15 (c) DISPOSITION OF EMPLOYEE CONTRIBUTIONS TO
16 THE CSRDF.—There shall be paid to the employee, from
17 the CSRDF, the lump-sum credit to which such employee
18 would be entitled under section 8342 of title 5, United
19 States Code, to the extent attributable to the period of
20 erroneous coverage involved.

21 (d) DISPOSITION OF TSP CONTRIBUTIONS.—In the
22 case of an employee described in subsection (a), section
23 121(d)(2) shall apply.

1 **SEC. 123. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD**
2 **BE SOCIAL SECURITY-ONLY COVERED, BUT**
3 **WHO IS ERRONEOUSLY CSRS COVERED IN-**
4 **STEAD.**

5 (a) IN GENERAL.—Except as provided in section 125,
6 this section shall apply in the case of any employee who
7 should be Social Security-Only covered but, as a result of
8 a retirement coverage error, is CSRS covered instead.

9 (b) AUTOMATIC EXCLUSION FROM CSRS.—An em-
10 ployee described in subsection (a) shall not, by reason of
11 the retirement coverage error described in subsection (a),
12 be eligible to be treated as an individual who is CSRS cov-
13 ered.

14 (c) DISPOSITION OF CONTRIBUTIONS TO THE
15 CSRDF.—

16 (1) IN GENERAL.—In the case of an employee
17 described in subsection (a), section 102(b) shall
18 apply.

19 (2) IRRELEVANT PROVISIONS TO BE DIS-
20 REGARDED.—For purposes of paragraph (1), section
21 102(b) shall be applied disregarding the provisions
22 of paragraphs (1)(B)(ii)(II) (to the extent they re-
23 late to amounts that should have been deducted
24 under section 8422 of title 5, United States Code)
25 and (2)(B)(ii)(II) thereof.

1 (d) DISPOSITION OF TSP CONTRIBUTIONS.—In the
2 case of an employee described in subsection (a), section
3 121(d)(2) shall apply.

4 **SEC. 124. CORRECTED ERROR: SITUATIONS UNDER SEC-**
5 **TIONS 121 THROUGH 123.**

6 (a) IN GENERAL.—Not later than 6 months after the
7 date of enactment of this Act, there shall be submitted
8 to the Congress a proposal (including any necessary draft
9 legislation) to carry out the policy described in subsection
10 (b).

11 (b) POLICY.—Under the proposal, any employee with
12 respect to whom the applicable retirement coverage error
13 (referred to in section 121, 122, or 123, as applicable)
14 has already been corrected, but under terms less advan-
15 tageous to the employee than would have been the case
16 under this Act, shall be afforded a reasonable opportunity
17 to obtain treatment comparable to the treatment afforded
18 under this Act.

19 (c) JOINT ACTION.—This section shall be carried out
20 by the Director of the Office of Personnel Management,
21 in consultation with the Executive Director of the Federal
22 Retirement Thrift Investment Board and the Commis-
23 sioner of Social Security.

1 **SEC. 125. VESTED EMPLOYEES EXCEPTED FROM AUTO-**
2 **MATIC EXCLUSION.**

3 (a) IN GENERAL.—Nothing in this subtitle shall, by
4 reason of any retirement coverage error, result in the auto-
5 matic exclusion of any employee from FERS, CSRS-Off-
6 set, or CSRS if, as of the date on which notice of such
7 error is given (in accordance with section 201), such em-
8 ployee's rights have vested under the retirement system
9 involved.

10 (b) VESTING.—For purposes of this section, vesting
11 of rights shall be considered to have occurred if the em-
12 ployee has (by the date as of which the determination is
13 made) completed at least 5 years of civilian service, taking
14 into account only creditable service under section 8332 or
15 8411 of title 5, United States Code.

16 (c) ELECTIONS.—

17 (1) ERRONEOUSLY FERS COVERED.—Any em-
18 ployee affected by an error described in section 121
19 who is determined under this section to satisfy sub-
20 section (b) may elect—

21 (A) to be treated in accordance with sec-
22 tion 121; or

23 (B) to remain FERS covered.

24 (2) OTHER CASES.—Any employee affected by
25 an error described in section 122 or 123 who is de-

1 terminated under this section to satisfy subsection (b)
2 may elect—

3 (A) to be treated in accordance with sec-
4 tion 122 or 123 (as applicable); or

5 (B) to remain (or instead become) CSRS-
6 Offset covered.

7 (d) EFFECT OF AN ELECTION TO BE TRANSFERRED
8 FROM CSRS TO CSRS-OFFSET.—In the case of an em-
9 ployee affected by an error described in section 123 who
10 elects the option under subsection (c)(2)(B), the effect of
11 the election shall be the same as described in section 104.

12 (e) DEFAULT RULE.—If the employee does not make
13 any election within the 6-month period beginning on the
14 date on which the appropriate notice is given to such em-
15 ployee, the option under paragraph (1)(B) or (2)(B) of
16 subsection (c), as applicable, shall be deemed to have been
17 elected as of the last day of such period. Nothing in this
18 section shall be considered to afford an employee the op-
19 tion of becoming or remaining CSRS covered.

20 (f) RETROACTIVE EFFECT.—An election under this
21 section (including an election by default, and an election
22 to remain covered by the retirement system by which the
23 electing individual is covered as of the date of the election)
24 shall be effective retroactive to the effective date of the
25 retirement coverage error to which the election relates.

1 (g) SPECIAL RULE IN CASE OF DISABILITY.—If, as
 2 of the date referred to in subsection (a), the employee is
 3 entitled to receive an annuity under chapter 83 or 84 of
 4 title 5, United States Code, based on disability, or com-
 5 pensation under subchapter I of chapter 81 of such title
 6 for injury to, or disability of, such employee, subsections
 7 (a) and (b) shall be applied by substituting (for the date
 8 that would otherwise apply) the date as of which entitle-
 9 ment to such annuity or compensation terminates (if at
 10 all).

11 (h) NOTIFICATION.—Any notice under section 201
 12 shall include such additional information or other modi-
 13 fications as the Office of Personnel Management may by
 14 regulation prescribe in connection with the situations cov-
 15 ered by this subtitle, particularly as they relate to the con-
 16 sequences of being vested or not being vested.

17 **Subtitle D—Employee Who Should**
 18 **Have Been CSRS Covered or**
 19 **CSRS-Offset Covered, But Who**
 20 **Was Erroneously FERS Covered**
 21 **Instead**

22 **SEC. 131. ELECTIONS.**

23 (a) APPLICABILITY.—This subtitle shall apply in the
 24 case of any employee who—

1 (1) should be (or should have been) CSRS cov-
2 ered but, as a result of a retirement coverage error,
3 is (or was) FERS covered instead; or

4 (2) should be (or should have been) CSRS-Off-
5 set covered but, as a result of a retirement coverage
6 error, is (or was) FERS covered instead.

7 (b) UNCORRECTED ERROR.—If, at the time of mak-
8 ing an election under this section, the retirement coverage
9 error described in paragraph (1) or (2) of subsection (a)
10 (as applicable) has not been corrected, the employee af-
11 fected by such error may elect—

12 (1)(A) in the case of an error described in sub-
13 section (a)(1), to be CSRS covered instead; or

14 (B) in the case of an error described in sub-
15 section (a)(2), to be CSRS-Offset covered instead; or

16 (2) to remain FERS covered.

17 (c) CORRECTED ERROR.—If, at the time of making
18 an election under this section, the retirement coverage
19 error described in paragraph (1) or (2) of subsection (a)
20 (as applicable) has been corrected, the employee affected
21 by such error may elect—

22 (1) to be FERS covered instead; or

23 (2)(A) in the case of an error described in sub-
24 section (a)(1), to remain CSRS covered; or

1 (B) in the case of an error described in sub-
 2 section (a)(2), to remain CSRS-Offset covered.

3 (d) DEFAULT RULE.—If the employee is given writ-
 4 ten notice in accordance with section 201 as to the avail-
 5 ability of an election under this section, but does not make
 6 any such election within the 6-month period beginning on
 7 the date on which such notice is so given, the option under
 8 subsection (b)(2) or (c)(2), as applicable, shall be deemed
 9 to have been elected on the last day of such period.

10 (e) RETROACTIVE EFFECT.—An election under this
 11 section (including an election by default, and an election
 12 to remain covered by the retirement system by which the
 13 electing individual is covered as of the date of the election)
 14 shall be effective retroactive to the effective date of the
 15 retirement coverage error (as referred to in subsection (a))
 16 to which such election relates.

17 **SEC. 132. EFFECT OF AN ELECTION TO BE TRANSFERRED**
 18 **FROM FERS TO CSRS TO CORRECT A RETIRE-**
 19 **MENT COVERAGE ERROR.**

20 (a) APPLICABILITY.—This section shall apply in the
 21 case of any employee affected by an error described in sec-
 22 tion 131(a)(1) who elects the option available to such em-
 23 ployee under section 131(b)(1)(A).

24 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

1 (1) IN GENERAL.—Upon notification that an
2 employee has made an election under this section,
3 the agency in or under which such employee is em-
4 ployed shall promptly pay to the CSRDF, in a lump
5 sum, an amount equal to the excess of—

6 (A) the amount by which—

7 (i) the amount that should have been
8 deducted and withheld from the pay of the
9 employee for the period of erroneous cov-
10 erage involved under section 8334 of title
11 5, United States Code, exceeds

12 (ii) the amount that was actually de-
13 ducted and withheld from the pay of the
14 employee for the period of erroneous cov-
15 erage involved under section 8422 of such
16 title (and not refunded), over

17 (B) the amount by which—

18 (i) the amount of the Government
19 contributions actually made under section
20 8423 of such title with respect to the em-
21 ployee for the period of erroneous coverage
22 involved, exceeds

23 (ii) the amount of the Government
24 contributions that should have been made
25 under section 8334 of such title with re-

1 spect to the employee for the period of er-
2 roneous coverage involved.

3 (2) AGENCY TO BE REIMBURSED FOR CERTAIN
4 AMOUNTS.—

5 (A) IN GENERAL.—The employee for whom
6 the payment under paragraph (1) is made shall
7 repay to the agency (referred to in paragraph
8 (1)) an amount equal to the OASDI employee
9 taxes refunded or refundable to such employee
10 for any portion of the period of erroneous cov-
11 erage involved (computed in such manner as the
12 Director of the Office of Personnel Manage-
13 ment, with the concurrence of the Commis-
14 sioner of Social Security, shall by regulation
15 prescribe), not to exceed the amount described
16 in paragraph (1)(A).

17 (B) RIGHT OF RECOVERY; WAIVER.—If the
18 employee fails to repay the amount required
19 under subparagraph (A), a sum equal to the
20 amount outstanding is recoverable by the Gov-
21 ernment from the employee (or the employee's
22 estate, if applicable) by—

23 (i) setoff against accrued pay, com-
24 pensation, amount of retirement credit, or

1 another amount due the employee from the
2 Government; and

3 (ii) such other method as is provided
4 by law for the recovery of amounts owing
5 to the Government.

6 The head of the agency concerned may waive,
7 in whole or in part, a right of recovery under
8 this paragraph if it is shown that recovery
9 would be against equity and good conscience or
10 against the public interest.

11 (C) TREATMENT OF AMOUNTS REPAID OR
12 RECOVERED.—Any amount repaid by, or recov-
13 ered from, an individual (or an estate) under
14 this paragraph shall be credited to the appro-
15 priation, fund, or account from which the
16 amount involved was originally paid.

17 (c) DISPOSITION OF EXCESS TSP CONTRIBU-
18 TIONS.—Section 105(c) shall apply in the case of an em-
19 ployee described in subsection (a).

20 **SEC. 133. EFFECT OF AN ELECTION TO BE TRANSFERRED**
21 **FROM FERS TO CSRS-OFFSET TO CORRECT A**
22 **RETIREMENT COVERAGE ERROR.**

23 (a) APPLICABILITY.—This section shall apply in the
24 case of any employee affected by an error described in sec-

1 tion 131(a)(2) who elects the option available to such em-
 2 ployee under section 131(b)(1)(B).

3 (b) EFFECT.—The effect of an election referred to
 4 in subsection (a) shall be substantially the same as that
 5 described in section 105.

6 **SEC. 134. EFFECT OF AN ELECTION TO BE RESTORED TO**
 7 **FERS AFTER HAVING BEEN CORRECTED TO**
 8 **CSRS.**

9 (a) APPLICABILITY.—This section shall apply in the
 10 case of any employee affected by an error described in sec-
 11 tion 131(a)(1) who elects the option under section
 12 131(c)(1).

13 (b) EFFECT.—The effect of an election referred to
 14 in subsection (a) shall be substantially the same as that
 15 described in section 102.

16 **SEC. 135. EFFECT OF AN ELECTION TO BE RESTORED TO**
 17 **FERS AFTER HAVING BEEN CORRECTED TO**
 18 **CSRS-OFFSET.**

19 (a) APPLICABILITY.—This section shall apply in the
 20 case of any employee affected by an error described in sec-
 21 tion 131(a)(2) who elects the option under section
 22 131(c)(1).

23 (b) EFFECT.—The effect of an election referred to
 24 in subsection (a) shall be substantially the same as that
 25 described in section 103.

1 **SEC. 136. DISQUALIFICATION OF CERTAIN INDIVIDUALS TO**
2 **WHOM SAME ELECTION WAS PREVIOUSLY**
3 **AVAILABLE.**

4 Notwithstanding any other provision of this subtitle,
5 an election under this subtitle shall not be available in the
6 case of any individual to whom an election under section
7 846.204 of title 5 of the Code of Federal Regulations (as
8 in effect as of January 1, 1997) was made available in
9 connection with the same error pursuant to notification
10 provided in accordance with such section.

11 **Subtitle E—Employee Who Should**
12 **Have Been CSRS-Offset Cov-**
13 **ered, But Who Was Erroneously**
14 **CSRS Covered Instead**

15 **SEC. 141. AUTOMATIC TRANSFER TO CSRS-OFFSET.**

16 (a) **APPLICABILITY.**—This subtitle shall apply in the
17 case of any employee who should be (or should have been)
18 CSRS-Offset covered but, as a result of a retirement cov-
19 erage error, is (or was) CSRS covered instead.

20 (b) **UNCORRECTED ERROR.**—If the error has not
21 been corrected, the employee shall be treated in the same
22 way as if such employee had instead been CSRS-Offset
23 covered, effective retroactive to the effective date of such
24 error.

25 (c) **CORRECTED ERROR.**—If the error has been cor-
26 rected, the correction shall (to the extent not already car-

ried out) be made effective retroactive to the effective date
of such error.

SEC. 142. EFFECT OF TRANSFER.

The effect of a transfer under section 141 shall be
as set forth in regulations which the Office of Personnel
Management shall prescribe consistent with section 104.

**Subtitle F—Employee Who Should
Have Been CSRS Covered, But
Who Was Erroneously CSRS-Off-
set Covered Instead**

SEC. 151. ELECTIONS.

(a) **APPLICABILITY.**—This subtitle shall apply in the
case of any employee who should be (or should have been)
CSRS covered but, as a result of a retirement coverage
error, is (or was) CSRS-Offset covered instead.

(b) **UNCORRECTED ERROR.**—If, at the time of mak-
ing an election under this section, the retirement coverage
error described in subsection (a) has not been corrected,
the employee affected by such error may elect—

(1) to be CSRS covered instead; or

(2) to remain CSRS-Offset covered.

(c) **CORRECTED ERROR.**—If, at the time of making
an election under this section, the retirement coverage
error described in subsection (a) has been corrected, the
employee affected by such error may elect—

1 (1) to be CSRS-Offset covered instead; or

2 (2) to remain CSRS covered.

3 (d) DEFAULT RULE.—If the employee is given writ-
 4 ten notice in accordance with section 201 as to the avail-
 5 ability of an election under this section, but does not make
 6 any such election within the 6-month period beginning on
 7 the date on which such notice is so given, the option under
 8 subsection (b)(2) or (c)(2), as applicable, shall be deemed
 9 to have been elected on the last day of such period.

10 (e) RETROACTIVE EFFECT.—An election under this
 11 section (including an election by default, and an election
 12 to remain covered by the retirement system by which the
 13 electing individual is covered as of the date of the election)
 14 shall be effective retroactive to the effective date of the
 15 retirement coverage error (as referred to in subsection (a))
 16 to which such election relates.

17 **SEC. 152. EFFECT OF AN ELECTION TO BE TRANSFERRED**
 18 **FROM CSRS-OFFSET TO CSRS TO CORRECT**
 19 **THE RETIREMENT COVERAGE ERROR.**

20 (a) APPLICABILITY.—This section shall apply in the
 21 case of any employee affected by an error described in sec-
 22 tion 151(a) who elects the option available to such em-
 23 ployee under section 151(b)(1).

24 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

1 (1) IN GENERAL.—Upon notification that an
2 employee has made an election under this section,
3 the agency in or under which such employee is em-
4 ployed shall promptly pay to the CSRDF, in a lump
5 sum, an amount equal to the amount by which—

6 (A) the amount that should have been de-
7 ducted and withheld from the pay of the em-
8 ployee for the period of erroneous coverage in-
9 volved under section 8334 of title 5, United
10 States Code (by virtue of being CSRS covered),
11 exceeds

12 (B) any amounts actually deducted and
13 withheld from the pay of the employee for the
14 period of erroneous coverage involved under
15 such section (pursuant to CSRS-Offset cov-
16 erage).

17 (2) AGENCY TO BE REIMBURSED FOR CERTAIN
18 AMOUNTS.—

19 (A) IN GENERAL.—The employee for whom
20 the payment under paragraph (1) is made shall
21 repay to the agency (referred to in paragraph
22 (1)) an amount equal to the OASDI employee
23 taxes refunded or refundable to such employee
24 for any portion of the period of erroneous cov-
25 erage involved (computed in such manner as the

1 Director of the Office of Personnel Manage-
2 ment, with the concurrence of the Commis-
3 sioner of Social Security, shall by regulation
4 prescribe), not to exceed the amount described
5 in paragraph (1)(A).

6 (B) RIGHT OF RECOVERY; WAIVER.—If the
7 employee fails to repay the amount required
8 under subparagraph (A), a sum equal to the
9 amount outstanding is recoverable by the Gov-
10 ernment from the employee (or the employee's
11 estate, if applicable) by—

12 (i) setoff against accrued pay, com-
13 pensation, amount of retirement credit, or
14 another amount due the employee from the
15 Government; and

16 (ii) such other method as is provided
17 by law for the recovery of amounts owing
18 to the Government.

19 The head of the agency concerned may waive,
20 in whole or in part, a right of recovery under
21 this paragraph if it is shown that recovery
22 would be against equity and good conscience or
23 against the public interest.

24 (C) TREATMENT OF AMOUNTS REPAYED OR
25 RECOVERED.—Any amount repaid by, or recov-

1 ered from, an individual (or an estate) under
 2 this paragraph shall be credited to the appro-
 3 priation, fund, or account from which the
 4 amount involved was originally paid.

5 (3) DEPOSIT TO BE BASED ON AMOUNT OF RE-
 6 FUND ACTUALLY RECEIVED.—For purposes of ap-
 7 plying sections 8334(d)(1) and 8339(i) of title 5,
 8 United States Code, in the case of an employee de-
 9 scribed in subsection (a) who has received a refund
 10 of deductions that are attributable to a period when
 11 the employee was erroneously CSRS-Offset covered,
 12 nothing in either of those sections shall be consid-
 13 ered to require that, in order to receive credit for
 14 that period as a CSRS-covered employee, a deposit
 15 be made in excess of the refund actually received for
 16 such period, plus interest.

17 **SEC. 153. EFFECT OF AN ELECTION TO BE RESTORED TO**
 18 **CSRS-OFFSET AFTER HAVING BEEN COR-**
 19 **RECTED TO CSRS.**

20 (a) APPLICABILITY.—This section shall apply in the
 21 case of any employee affected by an error described in sec-
 22 tion 151(a) who elects the option available to such em-
 23 ployee under section 151(c)(1).

24 (b) DISPOSITION OF CONTRIBUTIONS TO THE
 25 CSRDF.—In the case of an employee described in sub-

1 section (a), the provisions of section 102(b) shall apply,
2 except that, in applying such provisions—

3 (1) “the applicable provisions of section 8334”
4 shall be substituted for “section 8422” in paragraph
5 (1)(B)(ii)(II) thereof; and

6 (2) “the applicable provisions of section 8334”
7 shall be substituted for “section 8423” in paragraph
8 (2)(B)(ii)(II) thereof.

9 **Subtitle G—Additional Provisions**
10 **Relating to Government Agencies**

11 **SEC. 161. REPAYMENT REQUIRED IN CERTAIN SITUATIONS.**

12 (a) IN GENERAL.—An individual who previously re-
13 ceived a payment ordered by a court or provided as a set-
14 tlement of claim for losses resulting from a retirement cov-
15 erage error shall not be entitled to make an election under
16 this Act unless repayment of the amount so received by
17 such individual is waived in whole or in part by the Office
18 of Personnel Management, and any amount not waived is
19 repaid.

20 (b) REGULATIONS.—Any repayment under this sec-
21 tion shall be made in accordance with regulations pre-
22 scribed by the Office.

1 **SEC. 162. EQUITABLE SHARING OF AMOUNTS PAYABLE**
2 **FROM THE GOVERNMENT IF MORE THAN ONE**
3 **AGENCY INVOLVED.**

4 The Office of Personnel Management shall by regula-
5 tion prescribe rules under which, in the case of an em-
6 ployee who has been employed in or under more than 1
7 agency since the date of the retirement coverage error in-
8 volved (and before its rectification under this Act), any
9 contributions or other amounts required to be paid from
10 the then current employing agency (other than lost earn-
11 ings under section 163(a)(2)) shall be equitably allocated
12 between or among the appropriate agencies.

13 **SEC. 163. PROVISIONS RELATING TO THE ORIGINAL RE-**
14 **SPONSIBLE AGENCY.**

15 (a) OBLIGATIONS OF THE ORIGINAL RESPONSIBLE
16 AGENCY.—

17 (1) EXPENSES FOR SERVICES OF FINANCIAL
18 ADVISOR.—The Office of Personnel Management
19 shall by regulation prescribe rules under which, in
20 the case of any employee eligible to make an election
21 under this Act, the original responsible agency (as
22 determined under succeeding provisions of this sec-
23 tion) shall pay (or make reimbursement for) any
24 reasonable expenses incurred by such employee for
25 services received from any licensed financial or legal

1 consultant or advisor in connection with such elec-
2 tion.

3 (2) SPECIAL RULE.—Such regulations shall also
4 include provisions to ensure that, to the extent lost
5 earnings under the Thrift Savings Fund are involved
6 in connection with a particular error, the original re-
7 sponsible agency shall pay (or reimburse any other
8 agency that pays) any amounts to the Thrift Sav-
9 ings Fund representing lost earnings with respect to
10 such error.

11 (b) ORIGINAL RESPONSIBLE AGENCY DEFINED.—
12 For purposes of this Act, the term “original responsible
13 agency”, with respect to a retirement coverage error af-
14 fecting an employee, means—

15 (1) except in the situation described in para-
16 graph (2), the agency determined by the Office of
17 Personnel Management to have made the initial re-
18 tirement coverage error (including one made before
19 January 1, 1984); or

20 (2) if the error is attributable, in whole or in
21 part, to an erroneous regulation promulgated by the
22 Office of Personnel Management, such Office.

23 (c) PROCEDURES FOR IDENTIFYING THE ORIGINAL
24 RESPONSIBLE AGENCY.—

1 (1) IN GENERAL.—For purposes of this section,
2 the original responsible agency, in any situation to
3 which this section applies, shall be identified by the
4 Office of Personnel Management in accordance with
5 regulations which the Office shall prescribe.

6 (2) FINALITY.—A determination made by the
7 Office under this subsection shall be final and not
8 subject to any review.

9 (d) IF ORIGINAL RESPONSIBLE AGENCY NO LONGER
10 EXISTS.—If the agency which (before the application of
11 this subsection) is identified as the original responsible
12 agency no longer exists (whether because of a reorganiza-
13 tion or otherwise)—

14 (1) the successor agency (as determined under
15 regulations prescribed by the Office) shall be treated
16 as the original responsible agency; or

17 (2) if none, this section shall be applied by sub-
18 stituting the CSRDF for the original responsible
19 agency.

20 (e) SOURCE OF PAYMENTS IF ERROR DUE TO ERRO-
21 NEOUS OPM REGULATIONS.—In any case in which the
22 Office of Personnel Management is the original respon-
23 sible agency by reason of subsection (b)(2), any amounts
24 payable from the Office under this section shall be payable
25 from the CSRDF.

1 **TITLE II—GENERAL PROVISIONS**

2 **SEC. 201. IDENTIFICATION AND NOTIFICATION REQUIRE-** 3 **MENTS.**

4 (a) IN GENERAL.—The Office of Personnel Manage-
5 ment shall prescribe regulations under which Government
6 agencies shall take such measures as may be necessary
7 to ensure that all individuals who are (or have been) af-
8 fected by a retirement coverage error giving rise to any
9 election or automatic change in retirement coverage under
10 this Act shall be promptly identified and notified in ac-
11 cordance with this section.

12 (b) MATTER TO BE INCLUDED IN NOTICE TO INDIV-
13 IDUALS.—Any notice furnished under this section shall
14 be made in writing and shall include at least the following:

15 (1) DESCRIPTION OF ERROR.—A description of
16 the error involved, including a clear and concise ex-
17 planation as to why the original retirement coverage
18 determination was erroneous, citations to (and a
19 summary description of) the pertinent provisions of
20 law, and how that determination should instead have
21 been made.

22 (2) METHOD FOR RECTIFICATION.—How the
23 error is to be rectified under this Act, including
24 whether rectification will be achieved through an
25 automatic change in retirement coverage (and, if so,

1 the time, form, and manner in which that change
2 will be effected) or an election.

3 (3) ELECTION PROCEDURES, ETC.—If an elec-
4 tion is provided under this Act, all relevant informa-
5 tion as to how such an election may be made, the
6 options available, the differences between those re-
7 spective options (as further specified in succeeding
8 provisions of this subsection), and the consequences
9 of failing to make a timely election.

10 (4) ACCRUED BENEFITS, ETC.—With respect to
11 the (or each) retirement system by which the indi-
12 vidual is then covered (disregarding the Thrift Sav-
13 ings Plan), and to the extent applicable:

14 (A) A brief summary of any benefits ac-
15 crued.

16 (B) The amount of employee contributions
17 made to date and the effect of any applicable
18 disposition rules relating thereto (including pro-
19 visions relating to excess amounts or shortfalls).

20 (C) The amount of any Government con-
21 tributions made to date and the effect of any
22 applicable disposition rules relating thereto (in-
23 cluding provisions relating to excess amounts or
24 shortfalls).

1 (5) THRIFT SAVINGS FUND.—With respect to
2 the Thrift Savings Fund, the balance that then is
3 (or would be) credited to the individual's account de-
4 pending on the option chosen, with any such balance
5 to be shown both in the aggregate and broken down
6 by—

7 (A) individual contributions;

8 (B) automatic (1 percent) Government
9 contributions; and

10 (C) matching Government contributions,
11 including lost earnings on each and the extent to
12 which any makeup contributions or forfeitures would
13 be involved.

14 (6) OASDI BENEFITS.—Such information re-
15 garding benefits under title II of the Social Security
16 Act as the Commissioner of Social Security consid-
17 ers appropriate.

18 (7) OTHER INFORMATION.—Any other informa-
19 tion that the Director of the Office of Personnel
20 Management may by regulation prescribe after con-
21 sultation with the Executive Director of the Federal
22 Retirement Thrift Investment Board and such other
23 agency heads as the Director considers appropriate,
24 including any appeal rights available to the individ-
25 ual.

1 (c) COMPARISONS.—Any amounts required to be in-
2 cluded under subsection (b)(4) shall, with respect to the
3 respective retirement systems involved, be determined—

4 (1) as of the date the retirement coverage error
5 was corrected (if applicable);

6 (2) as of the then most recent date for which
7 those benefits and amounts are ascertainable, as-
8 suming no change in retirement coverage; and

9 (3) as of the then most recent date for which
10 those benefits and amounts are ascertainable, as-
11 suming the alternative option is chosen.

12 (d) PAST ERRORS.—All measures required under this
13 section shall, with respect to errors preceding the date
14 specified in section 206(e) (relating to the effective date
15 for all regulations prescribed under this Act), be completed
16 no later than December 31, 2001.

17 **SEC. 202. INDIVIDUAL APPEAL RIGHTS.**

18 (a) IN GENERAL.—An individual aggrieved by a final
19 determination under this Act shall be entitled to appeal
20 such determination to the Merit Systems Protection Board
21 under section 7701 of title 5, United States Code.

22 (b) NOTIFICATION APPEALS.—The Office of Person-
23 nel Management shall by regulation establish procedures
24 under which individuals may bring an appeal to the Office
25 with respect to any failure to have been properly notified

1 in accordance with section 201. A final determination
2 under this subsection shall be appealable under subsection
3 (a).

4 **SEC. 203. INFORMATION TO BE FURNISHED BY GOVERN-**
5 **MENT AGENCIES TO AUTHORITIES ADMIN-**
6 **ISTERING THIS ACT.**

7 (a) **APPLICABILITY.**—The authorities identified in
8 this subsection are:

9 (1) The Director of the Office of Personnel
10 Management.

11 (2) The Commissioner of Social Security.

12 (3) The Executive Director of the Federal Re-
13 tirement Thrift Investment Board.

14 (b) **AUTHORITY TO OBTAIN INFORMATION.**—Each
15 authority identified in subsection (a) may secure directly
16 from any department or agency of the United States infor-
17 mation necessary to enable such authority to carry out its
18 responsibilities under this Act. Upon request of the au-
19 thority involved, the head of the department or agency in-
20 volved shall furnish that information to the requesting au-
21 thority.

22 (c) **LIMITATION; SAFEGUARDS.**—Each of the respec-
23 tive authorities under subsection (a)—

24 (1) shall request only such information as that
25 authority considers necessary; and

1 (2) shall establish, by regulation or otherwise,
2 appropriate safeguards to ensure that any informa-
3 tion obtained under this section shall be used only
4 for the purpose authorized.

5 **SEC. 204. SOCIAL SECURITY RECORDS.**

6 Notwithstanding any limitations in section 205 of the
7 Social Security Act regarding the modification of wage
8 records maintained by the Commissioner of Social Secu-
9 rity for purposes of title II of such Act, the Commissioner
10 of Social Security shall modify the wage record of each
11 employee affected by a retirement coverage error to
12 change, add, or delete any entry regarding service as an
13 employee to the extent necessary to carry out the purposes
14 of this Act or the Social Security Act.

15 **SEC. 205. CONFORMING AMENDMENTS RESPECTING SO-**
16 **CIAL SECURITY COVERAGE AND OASDI**
17 **TAXES.**

18 (a) SOCIAL SECURITY COVERAGE.—Section
19 210(a)(5)(H) of the Social Security Act (42 U.S.C.
20 410(a)(5)(H)) is amended—

- 21 (1) in clause (i) by striking “or” at the end;
22 (2) in clause (ii) by striking the semicolon and
23 inserting “, or”; and
24 (3) by adding at the end the following:

1 “(iii)(I) described in section 111(a)(3)
 2 of the Federal Retirement Coverage Cor-
 3 rections Act, on or after the effective date
 4 of an election (or deemed election) by such
 5 individual under section 111(b)(2) of such
 6 Act;

7 “(II) described in section 131(a)(1) of
 8 such Act, on or after the effective date of
 9 an election (or deemed election) by such in-
 10 dividual under subsection (b)(2) or (c)(1)
 11 of section 131 of such Act; or

12 “(III) described in section 151(a) of
 13 such Act, on or after the effective date of
 14 an election (or deemed election) by such in-
 15 dividual under subsection (b)(2) or (c)(1)
 16 of section 151 of such Act;”.

17 (b) OASDI TAXES.—Section 3121(b)(5)(H) of the
 18 Internal Revenue Code of 1986 is amended—

19 (1) in clause (i) by striking “or” at the end;

20 (2) in clause (ii) by striking the semicolon and
 21 inserting “; or”; and

22 (3) by adding at the end the following:

23 “(iii)(I) described in section 111(a)(3)
 24 of the Federal Retirement Coverage Cor-
 25 rections Act, on or after the effective date

1 of an election (or deemed election) by such
2 individual under section 111(b)(2) of such
3 Act;

4 “(II) described in section 131(a)(1) of
5 such Act, on or after the effective date of
6 an election (or deemed election) by such in-
7 dividual under subsection (b)(2) or (c)(1)
8 of section 131 of such Act; or

9 “(III) described in section 151(a) of
10 such Act, on or after the effective date of
11 an election (or deemed election) by such in-
12 dividual under subsection (b)(2) or (c)(1)
13 of section 151 of such Act;”.

14 **SEC. 206. REGULATIONS.**

15 (a) IN GENERAL.—Any regulations necessary to
16 carry out this Act shall be prescribed by the Director of
17 the Office of Personnel Management, the Executive Direc-
18 tor of the Federal Retirement Thrift Investment Board,
19 the Commissioner of Social Security, the Secretary of the
20 Treasury, and any other appropriate authority, with re-
21 spect to matters within their respective areas of jurisdic-
22 tion.

23 (b) MATTERS TO BE INCLUDED.—The regulations
24 prescribed by the Director of the Office of Personnel Man-
25 agement shall include at least the following:

1 (1) FORMER EMPLOYEES, ANNUITANTS, AND
2 SURVIVOR ANNUITANTS.—

3 (A) IN GENERAL.—Provisions under which,
4 to the maximum extent practicable and in ap-
5 propriate circumstances, any election available
6 to an employee under subtitle A, B, D, or F of
7 title I shall be available to a former employee,
8 annuitant, or survivor annuitant.

9 (B) SUBTITLE C SITUATIONS.—Provisions
10 under which subtitle C of title I shall apply in
11 the case of a former employee.

12 (C) SUBTITLE E SITUATIONS.—Provisions
13 under which the purposes of this paragraph
14 shall be carried with respect to any situation
15 under subtitle E of title I.

16 (2) FORMER SPOUSES.—Provisions under which
17 appropriate notification shall be afforded to any
18 former spouse affected by a change in retirement
19 coverage pursuant to this Act.

20 (3) PROCEDURAL REQUIREMENTS.—Provisions
21 establishing the procedural requirements in accord-
22 ance with which any determinations under this Act
23 (not otherwise addressed in this Act) shall be made,
24 in conformance with the requirements of this Act.

1 (4) AUTHORITY TO MAKE ACTUARIAL REDUC-
2 TION IN ANNUITY BY REASON OF CERTAIN UNPAID
3 AMOUNTS.—Provisions under which any payment re-
4 quired to be made by an individual to the Govern-
5 ment in order to make an election under this Act
6 which remains unpaid may be made by a reduction
7 in the appropriate annuity or survivor annuity. The
8 reduction shall, to the extent practicable, be de-
9 signed so that the present value of the future reduc-
10 tion is actuarially equivalent to the amount so re-
11 quired.

12 (c) DEFINITIONS.—For purposes of this section—

13 (1) the term “annuitant” means any individual
14 who is an annuitant as defined by section 8331(9)
15 or 8401(2) of title 5, United States Code; and

16 (2) the term “former employee” includes any
17 former employee who satisfies the service require-
18 ment for title to a deferred annuity under chapter
19 83 or 84 of such title 5 (as applicable), but—

20 (A) has not attained the minimum age re-
21 quired for title to such an annuity; or

22 (B) has not filed claim therefor.

23 (d) COORDINATION RULE.—In prescribing regula-
24 tions to carry out this Act, the Director of the Office of
25 Personnel Management shall consult with—

1 (1) the Administrative Office of the United
2 States Courts;

3 (2) the Clerk of the House of Representatives;

4 (3) the Sergeant at Arms and Doorkeeper of
5 the Senate; and

6 (4) other appropriate officers or authorities.

7 (e) EFFECTIVE DATE.—All regulations necessary to
8 carry out this Act shall take effect as of the first day of
9 the first month beginning after the end of the 6-month
10 period beginning on the date of enactment of this Act.

11 **SEC. 207. ALL ELECTIONS TO BE APPROVED BY OPM.**

12 Notwithstanding any other provision of this Act, no
13 election under this Act (other than an election by default)
14 may be given effect until the Office of Personnel Manage-
15 ment has determined, in writing, that such election is in
16 compliance with the requirements of this Act.

17 **SEC. 208. ADDITIONAL TRANSFERS TO OASDI TRUST FUNDS**
18 **IN CERTAIN CASES.**

19 If the Commissioner of Social Security determines
20 that the payment of the OASDI taxes described in this
21 Act did not result in a credit to the OASDI trust funds
22 of an equal amount, the Commissioner of Social Security
23 shall notify the Secretary of the Treasury of the amount
24 of any shortfall. Promptly upon receiving such notifica-
25 tion, the Secretary of the Treasury shall transfer an

1 amount equal to such shortfall from the general fund of
 2 the Treasury to the OASDI trust funds.

3 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) AMENDMENT RELATING TO LIMITATION ON
 5 SOURCES FROM WHICH CONTRIBUTIONS TO THE THRIFT
 6 SAVINGS FUND ARE ALLOWED.—Section 8432(h) of title
 7 5, United States Code, is amended by striking “title.” and
 8 inserting “title or the Federal Retirement Coverage Cor-
 9 rections Act.”.

10 (b) DESCRIPTION OF AMOUNTS COMPRISING THE
 11 THRIFT SAVINGS FUND.—Section 8437(b) of title 5,
 12 United States Code, is amended by striking “expenses).”
 13 and inserting “expenses), as well as contributions under
 14 the Federal Retirement Coverage Corrections Act (and
 15 lost earnings made up under such Act).”.

16 (c) ADMINISTRATIVE EXPENSES.—

17 (1) THRIFT SAVINGS PLAN.—Section 8437(d)
 18 of title 5, United States Code, is amended by insert-
 19 ing “(including the provisions of the Federal Retire-
 20 ment Coverage Corrections Act that relate to this
 21 subchapter)” after “this subchapter”.

22 (2) CSRS, CSRS-OFFSET, FERS.—Section
 23 8348(a)(2) of title 5, United States Code, is amend-
 24 ed by striking “statutes;” and inserting “statutes
 25 (including the provisions of the Federal Retirement

1 Coverage Corrections Act that relate to this sub-
2 chapter);”.

3 (3) MSPB.—Section 8348(a)(3) of title 5,
4 United States Code, is amended by striking “title.”
5 and inserting “title and the Federal Retirement Cov-
6 erage Corrections Act.”.

7 **TITLE III—OTHER PROVISIONS**

8 **SEC. 301. PROVISIONS TO PERMIT CONTINUED CONFORM-** 9 **ITY OF OTHER FEDERAL RETIREMENT SYS-** 10 **TEMS.**

11 (a) FOREIGN SERVICE.—The Secretary of State shall
12 issue regulations to provide for the application of the pro-
13 visions of this Act in a like manner with respect to partici-
14 pants, annuitants, or survivors under the Foreign Service
15 Retirement and Disability System or the Foreign Service
16 Pension System (as applicable), except that—

17 (1) any individual aggrieved by a final deter-
18 mination shall appeal such determination to the For-
19 eign Service Grievance Board instead of the Merit
20 Systems Protection Board under section 202; and

21 (2) the Secretary of State shall perform the
22 functions and exercise the authority vested in the
23 Office of Personnel Management or the Director of
24 the Office of Personnel Management under this Act.

1 (b) CENTRAL INTELLIGENCE AGENCY.—Sections
2 292 and 301 of the Central Intelligence Agency Retirement
3 Act (50 U.S.C. 2141 and 2151) shall apply with re-
4 spect to this Act in the same manner as if this Act were
5 part of—

6 (1) the Civil Service Retirement System, to the
7 extent this Act relates to the Civil Service Retirement
8 System; and

9 (2) the Federal Employees' Retirement System,
10 to the extent this Act relates to the Federal Employees'
11 Retirement System.

12 **SEC. 302. PROVISIONS TO PREVENT REDUCTIONS IN FORCE**
13 **AND ANY UNFUNDED LIABILITY IN THE**
14 **CSRDF.**

15 (a) PROVISIONS TO PREVENT REDUCTIONS IN
16 FORCE.—

17 (1) LIMITATION.—An agency required to make
18 any payments under this Act may not conduct any
19 reduction in force solely by reason of any current or
20 anticipated lack of funds attributable to such pay-
21 ments.

22 (2) ALTERNATIVE REQUIRED.—In the cir-
23 cumstance described in paragraph (1), any cost sav-
24 ings that (but for this subsection) would otherwise
25 be sought through reductions in force shall instead

1 be achieved through attrition and limitations on hir-
2 ing.

3 (b) PROVISIONS TO PREVENT UNFUNDED LIABIL-
4 ITY.—

5 (1) IN GENERAL.—For purposes of section
6 8348(f) of title 5, United States Code, any unfunded
7 liability in the CSRDF created as a result of an
8 election made (or deemed to have been made) under
9 this Act, as determined by the Office of Personnel
10 Management, shall be considered a new benefit pay-
11 able from the CSRDF.

12 (2) COORDINATION RULE.—Paragraph (1) shall
13 not apply to the extent that subsection (h), (i), or
14 (m) of section 8348 of title 5, United States Code,
15 would otherwise apply.

16 **SEC. 303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR**
17 **AMOUNTS NOT OTHERWISE PROVIDED FOR**
18 **UNDER THIS ACT.**

19 Nothing in this Act shall preclude an individual from
20 bringing a claim against the Government of the United
21 States which such individual may have under section
22 1346(b) or chapter 171 of title 28, United States Code,
23 or any other provision of law (except to the extent the
24 claim is for any amounts otherwise provided for under this
25 Act).

1 **SEC. 304. EXTENSION OF OPEN ENROLLMENT PERIOD TO**
2 **EMPLOYEES UNDER THE FOREIGN SERVICE**
3 **RETIREMENT AND DISABILITY SYSTEM.**

4 Section 860 of the Foreign Service Act of 1980 (22
5 U.S.C. 4071i) is amended by inserting after the first sen-
6 tence the following: “The Secretary of State shall, in addi-
7 tion, issue regulations providing for an election for cov-
8 erage under the Foreign Service Pension System for em-
9 ployees covered under the Foreign Service Retirement and
10 Disability System comparable to the election provided for
11 by the Federal Employees’ Retirement System Open En-
12 rollment Act of 1997.”.

13 **TITLE IV—TAX PROVISIONS**

14 **SEC. 401. TAX PROVISIONS.**

15 (a) **PLAN QUALIFICATION.**—No retirement plan of
16 the United States (or any agency thereof) shall fail to be
17 treated as a qualified plan under the Internal Revenue
18 Code of 1986 by reason of any action taken under this
19 Act.

20 (b) **TRANSFERS.**—For purposes of the Internal Reve-
21 nue Code of 1986, no amount shall be includible in the
22 gross income of any individual by reason of any direct
23 transfer under this Act between funds or any Government
24 contribution under this Act to any fund or account, and

- 1 no amount shall be subject to tax under subtitle C of such
- 2 Code by reason of any such transfer or contribution.

Passed the House of Representatives July 20, 1998.

Attest:

ROBIN H. CARLE,
Clerk.